

REMARKS/ARGUMENTS

Claims 1-6, 10, 12, 14-18, 65 and 66 are active. Claims 7-9, 11, 13, and 19-64 have been withdrawn from consideration. The claims have been amended for clarity, to remove functional limitations, or to facilitate their possible rejoinder. In view of the remarks above, no new matter is believed to have been added. Favorable consideration of these amendments and allowance of the case are respectfully requested.

Restriction/Election

The Applicants previously elected with traverse **Group I**, claims 1-18, 65 and 66, directed to polynucleotides. A provisional election for examination purposes only was made of the following species: (1) polynucleotide sequences encoding for polypeptides having 80% identity to residues 13-555 of SEQ ID NO: 26, wherein said polypeptide has at least one mutation, at position **W550** (position 827 of the Taq polymerase wild-type) (at least claims 1-18, 65 and 66 readable thereon); and (1) polynucleotide SEQ ID NO:21 (at least claims 1-18, 65 and 66 readable thereon). The requirement has been made FINAL. The Applicants understand that additional species will be rejoined and examined upon an indication of allowability for a generic claim reading on the elected species. The Applicants respectfully request that the claims of the nonelected group(s) or other withdrawn subject matter which depend from or otherwise include all the limitations of an allowed elected claim, be rejoined upon an indication of allowability for the elected claim, see MPEP 821.04.

Objection—Specification

The Specification was objected to as not properly identifying sequences in Figs. 6 and 7. Figs. 6 and 7 both depict gels, but do not include sequence information. Accordingly, this objection is improper and should be withdrawn.

Rejection—35 U.S.C. §112, second paragraph

Claim 65 was rejected under 35 U.S.C. 112, second paragraph, as being indefinite.

The Applicants thank the Examiner for construing the claim for examination purposes.

Claims 65 and 66 have been revised in view of the Examiner's comment. This rejection may now be withdrawn.

Rejection—35 U.S.C. §112, first paragraph

Claims 1-6, 10, 12, 14-18, 65 and 66 were rejected under 35 U.S.C. 112, first paragraph, as lacking adequate written description. This rejection is moot in view of the amendments above. The claimed polynucleotides and polypeptides are now described by reference to their structural characteristics which are described in the specification.

Rejection—35 U.S.C. §112, first paragraph

Claims 1-6, 10, 12, 14-18, 65 and 66 were rejected under 35 U.S.C. 112, first paragraph, as lacking adequate enablement. This rejection is moot in view of the amendments above. The claimed polynucleotides and polypeptides are now described by reference to their structural characteristics which are described in the specification. Products that encode or which exhibit thermostable polymerase activity may be identified without undue experimentation by those of skill in the art at the time of invention using the assays described in the specification, for example the procedures shown in the present Examples. Consequently, this rejection cannot be sustained.

Rejection—35 U.S.C. §112, first paragraph

Claim 65 was rejected under 35 U.S.C. 112, first paragraph, as lacking adequate written description and enablement for the deposited phage strains. This rejection is moot in view of the prior deposit of these monoclonal phage strains under the terms of the Budapest Treaty and by the statement perfecting the deposit below.

Biological Deposit Statement


This phage strains I-3168, I-3169, I-3170, I-3171, I-3172, I-3173, I-3174, I-3175, I-3176 and I-3158 were deposited at the CNCM on February 27, 2004 under the terms of the Budapest Treaty. As required by 37 C.F.R. 1.808, subject to the one exception permitted by 37 C.F.R. 1.808(b), all restrictions imposed by the depositor on the availability to the public of the deposited material will be irrevocably removed upon granting of the patent. See MPEP 2410.01.

Conclusion

This application presents allowable subject matter and the Examiner is respectfully requested to pass it to issue. The Examiner is kindly invited to contact the undersigned should a further discussion of the issues or claims be helpful.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, L.L.P.

  
Thomas M. Cunningham, Ph.D.  
Registration No. 45,394